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(2) Date of repair 26-6-42

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No. 634	Press ~~Mis.~~
603-604.	
Dated 31-3- 1862.	

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Works Department, 31st March 1862.

No. 603. Read the following letter from Colonel W. I. BIRDWOOD, Deputy Chief Engineer, Southern Circle, to Lieutenant-Colonel W. H. HORSLEY, Secretary to Government, Public Works Department, dated Chepauk, 26th February 1862, No. 10,957 : —

SIR,

1 Letter from District Engineer Madura, No. 1,380, dated 11th January 1862.
1 Letter from do. No. 1,378, dated 10th January, with one enclosure.
1 Letter from Government Pleader, No. 216, dated 13th December 1861.
1 Letter from District Engineer South Arcot, No. 156, dated 10th January 1862, with seven enclosures.

1. I have the honor to forward herewith the correspondence as per margin with the District Engineer Madura and Government Pleader, relating to a contract entered into by Captain Paxton, 1st Assistant District Engineer of Tinnevelly, on the 31st May 1861, with one Mootooswâmi Pillai for completion within 4½ months from that date of a portion of Trunk Road No. 4 between Madura and Tinnevelly within the limits of the former District.

2. The Contract and Security Bonds provided for the following penalties in case of failure on the part of the Contractor, viz. :—

(1.) The payment of a fine of one Anna per yard for such portion of the road as had not been satisfactorily completed.

(2.) The repayment of any balance with the Contractor.

(3.) The payment of interest which may have accrued on the above.

3. The value of the property pledged as a guarantee for the faithful performance of the terms of the agreement is shown to be Rupees 1,001-15-0.

4. The Contractor having failed in his contract the work was taken out of his hands and carried on under Departmental supervision. The advances made to Contractor aggregate to Rupees 1,988-2-7 and the work performed by him was valued by Captain Paxton according to his own measurement taken on the 18th and 19th December last at Rupees 1,724-15-2, being Rupees 263-3-5 less than the total of advances. According to Captain Ryves' subsequent measurements the value of work done is Rupees 688-10-2 only, or Rupees 1,036-5-0 less than the amount for which Captain Paxton gives the Contractor credit.

5. For the reasons stated below the opinion of the Government Pleader was sought :—

(1.) Because the Contract and Security Bonds were not prepared in accordance with the forms in the Code.

(2.) Because the Contractor having agreed to execute the work to the satisfaction of Captain Paxton personally, and that Officer having valued the work done at Rupees 1,724-15-2, it did not appear that the Contractor or his Securities could be sued in addition to the penalties imposed on the Bonds executed, for the larger difference between Captain Ryves' valuation and the amount advanced.

6. Mr. Dale is of opinion that the Contractor could not safely be sued for more than the difference between the sums advanced, and Captain Paxton's valuation, in addition to the gross amount of the penalties, provided in the contract.

7. The District Engineer has submitted draft of a plaint, for the recovery of the amount, viz., Rupees 263 plus the penalties for which the Contractor has become liable, and he requests permission to proceed against the Contractor and his Security if they fail to refund the amount or make some satisfactory arrangements for its early liquidation. Captain Ryves is averse to the parties being allowed to work out their advances and the gross amount of the penalties, as the Contractor and his Security have quarrelled about the contract and as the work is progressing very favorably under Departmental control.

8. Captain Paxton having been called upon for explanation as to the informality of the contracts, states that the Bond being for both materials and labor, the forms of the Code were inapplicable, but were adhered to, as far as possible. The papers he remarks were not submitted to the District Engineer, as the contract was drawn up, and the work commenced, as soon as practicable, to admit of its completion before the setting in of the rains, the District Engineer being away at the time in the Cumbum Velly. Captain Paxton adds that the contract was however published in the District Gazette, and the District Engineer had been informed that it was contemplated to get the work done by contract. Captain Paxton is at a loss to account for the difference between his measurement and those of Captain Ryves unless by supposing that the

heaps of stone had in some degree sunk into the soil during the rains. The heaps were measured on several occasions both by Captain Paxton and Overseer Pulnevalu Mudali. Captain Paxton states that Lieutenant Coningham to whom he gave over charge was with him when the heaps were finally counted and the value of work entered in the contract statement.

9. Under these circumstances I request that authority may be granted for the Contractor and his Securities being sued as proposed by the District Engineer, in the event of their failing to pay up the amount due.

No. 604. ORDER THEREON, 31st March 1862, No. 634.

1. From the foregoing letter and papers submitted therewith, the Government learn that one Mootooswámi Pillai covenanted with Captain Paxton, when First Assistant District Engineer of Madura, to complete within a given time, and under certain specified penalties in case of failure, $4\frac{1}{2}$ miles of the Trunk Road from Madura to Tinnevelly; and that having failed in his contract, the work was taken out of his hands and entrusted to the ordinary agency of the Public Works Department. The Government further learn that the whole advance to the Contractor was Rupees 1,988-2-7, that the work performed by him was valued by Captain Paxton at Rupees 1,724-15-2, but that the District Engineer (Captain Ryves) only gives the Contractor credit for Rupees 688-10-2, or Rupees 1,036-5-0 less than Captain Paxton's valuation.

2. The object of the present report is not only to represent the circumstances of the contract and its failure, but to gain the permission of the Government to sue the defaulting Contractor; and the Deputy Chief Engineer's recommendation to this effect is fortified by the opinion of the Government Pleader at the Sudder Adálat, who has been consulted in the matter. Under the circumstances set forth, and as Mr. Dale does not appear to be averse to such a step, the Government authorize the District Engineer of Madura to file an action againt Contractor Mootooswámi Pillai, and to employ the Government Pleader in the Court of Madura to conduct such action on his behalf.

3. As the Contractor was only bound to work out his contract to the satisfaction of Captain Paxton personally, the Government agree with Mr. Dale that the suit should be limited to the recovery of the difference between that Officer's valuation of the work performed by the Contractor, and the amount of the advance received by him, together with interest and the gross amount of the penalties provided in the Contract. On the other hand, as Captain Paxton not only departed from the forms laid down in Chapter XVI of the new Code, but also entered into the contract without first Consulting the District Engineer, the Government will determine hereafter, on the suit being decided and copy of judgment placed before them, whether any costs that may be incurred by Government in suing the defaulting Contractor shall be borne by them, or be recovered from Captain Paxton. They will also determine, when a report is in due course submitted of the completion, and eventual cost, of the $4\frac{1}{2}$ miles of road in question whether Captain Paxton should not be held liable for any extra outlay on the work that might have resulted from the failure of the Contractor.

4. For the reasons stated by Captain Ryves in paragraph 3 of his letter of the 11th January 1862, No. 1,380, viz., that Captain Paxton, as the Officer who made the contract, valued the Contractor's work; and that as a junior officer for the first time taking charge of a range, Lieutenant Coningham, could not be expected to doubt Captain Paxton's ability to examine work which he had himself given out, and had watched for five months; the Government consider that Lieutenant Coningham could not, with justice, be made responsible for any loss which may result from an error in Captain Paxton's measurements.

5. This is another instance of the evil consequence of Government servants entering into contracts, as Mr. Dale observes, "unartistically prepared." Officers of the Public Works Department should be again warned of the responsibilities they incur by departing from the instructions laid down for their guidance in chapter XVI of the New Code.

(Signed) W. H. HORSLEY, Lieut.-Colonel,
Secretary to the Government.

Proceedings of the No. 634 Public Works Deptt. Madras Govt.

Under date the 31st March 1862

Submits correspondence with District Engineer, Madura and Government Pleader relating to a Contract entered into by Captain Paxton 1st Assistant Dist. Engineer with one Mootoosawmy Pillay for completing a portion of Trunk Road No. 4 and solicits that authority be granted for the Dt. Engr. to sue the Contractor and his Securities - - - - - - -

Read the following letter from the Dy. Chief Engineer Sn. Circle

H. E. 26th February 1862 No. 10957.

with letter

From the forgoing letter and papers submitted therewith, the Govt learn that one Mootoosawmy Pillay covenanted with Capt Paxton, when First Assistant District Engr of Madura, to complete within a given time, and under certain specified penalties in case of failure, 4½ miles of the Trunk road from Madura to Tinnevelly, and that having failed in his contract, the work was taken out of his hands and entrusted to the ordinary agency of

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the Public Works Dept. The Govt further learn that the whole advance to the Contractor was Rs 1,988-2-7, that the work performed by him was valued by Capt Paxton at Rs 1,724-15-2, but that the District Engr (Capt Ayres) only gives the contractor credit for Rs 688-10-2, or Rs 1,036-5-" less than Capt Paxton's valuation.

2. The object of the present report is not only to represent the circumstances of the contract and its failure, but to gain the permission of the Govt to sue the defaulting contractor; and the Dy Chief Engr's recommendation to this effect is fortified by the opinion of the Govt Pleader at the Sudr Udalut, who has been consulted in the matter. Under the circumstances set forth, and as Mr. Dale does not appear to be averse to such a step, the Govt

authorize the district Engr of Madura to file an action against Contractor Mootoosawmy Pillay, and to employ the Govt Pleader in the Court of Madura to conduct such action on his behalf.

3. As the contractor was only bound to work out his contract to the satisfaction of Capt. Paxton personally, the Govt agree with Mr. Dale that the suit should be limited to the recovery of the difference between that Officer's valuation of the work performed by the contractor, and the amount of the advance received by him, together with interest and the gross amount of the penalties provided in the contract. On the other hand, as Capt Paxton not only departed from the forms laid down in Chapter XVI of the New Code, but also entered into the contract without first consulting

the District Engr, the Govt will determine hereafter, on the suit being decided and copy of judgment placed before them, whether any costs that may be incurred by Govt in suing the defaulting contractor shall be borne by them, or be recovered from Capt Paxton. They will also determine, when a report is in due course submitted of the completion, and eventual cost, of the 4 1/2 miles of road in question, whether Capt Paxton should not be held liable for any extra outlay on the work, that might have resulted from ~~been incurred by~~ the failure of the contractor.

4. For the reasons stated by Capt Rypes in para 3 of his letter of the 11th January/62, No 1380, - viz that Capt Paxton, as the Officer who made the contract, valued the contractor's work, & that as a junior officer for the

first time taking ch[arge]
range, Lieut Coning[ham could]
not be expected to dou[bt]
Paxton's ability to examine
which he had himself given ou[t]
and had watched for five mon[ths]
the Govt consider that Lieut
Coningham could not, with justice,
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~~[illegible]~~ be again warned of the
responsibilities they incur by
departing from the instructions
laid down for their guidance in
Chapter XVI of the new Code.

W.T.D.

7 Copies

To
The Chief Engineer & Secy
13. Dy Do - Do. Sup. Circle -
with 12 Enclos.

(3)

Permission to sue a Contractor for failure of his contract in working out a portion of road in Madura.

Public Works 1862 Depa
Pro: of Govt. for March

No. 634

Pro: of the Madras Govt.
Dd/31st March /62

Authorizing Distt Engr. Madura to file an action against Contractor Mootooswamie Pillai for having failed to complete 2 1/2 Miles of the Trunk Road from Madura to Tinnevelly.

No. 603 & 604

10th March 624th